

EMPLOYERS' ASSOCIATIONS

in
WESTERN GERMANY

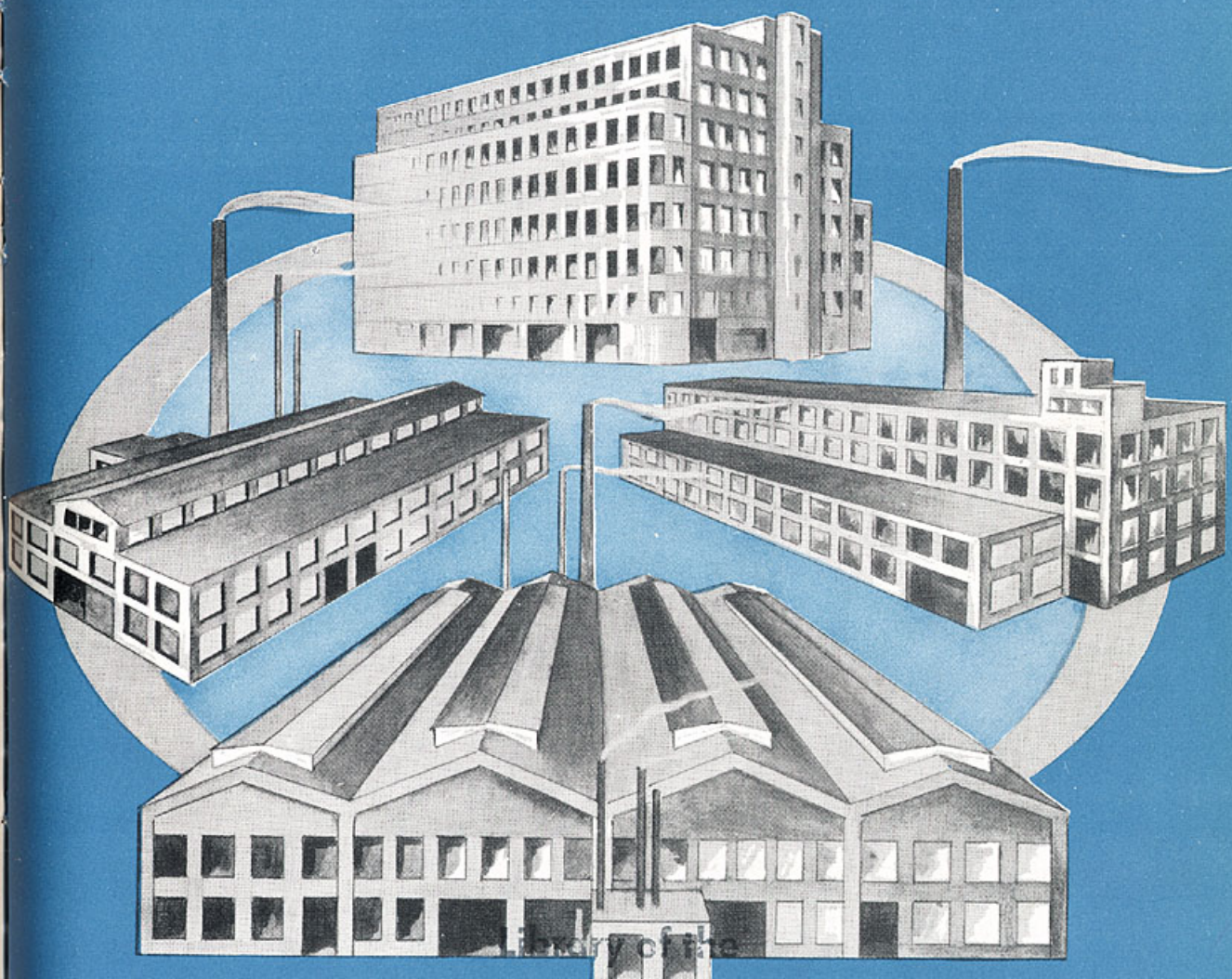
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ARBEITGEBER VERBÄNDE

in
WEST-DEUTSCHLAND

von

D. F. Mac DONALD



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EMPLOYERS' ASSOCIATIONS IN WESTERN GERMANY

by

D. F. MacDONALD

Visiting Expert Series No. 9

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FOREWORD

Harmonious relations between employer or their organizations and trade unions are important for several reasons. The ability of management and labor to work out solutions to their problems is a significant factor in promoting a sound and prosperous economy and the welfare of the general population. Moreover, sound industrial relations is a most effective means of combatting totalitarian influences, whether from the left or the right, which seek to exploit differences between management and labor for their own advantage.

A great responsibility accordingly devolves upon employers' and employees' associations in making the best possible use of opportunities for collective bargaining which can be preserved, as experience has demonstrated, only in a democratic society. In his report, Mr. MacDonald has endeavored to present his understanding of the manner in which employers' associations in Western Germany approach the question of collective bargaining. In so doing, he has also sought to describe the corresponding position of organized labor.

Mr. MacDonald's report, as well as other reports published in the "Visiting Expert Series", have touched upon the relationship between employers' associations and trade unions to government. This question has been and continues to be a major problem in democratic nations. There are no hard-and-fast rules which can be given, in any particular instance, by which the position taken by management and labor singly or jointly can be evaluated.

In my judgment, however, the exchange of views with informed persons from other countries may assist German employers' associations and trade unions in arriving at their own evaluation of the proper relationship to government. Through the cultural exchange program being conducted under Military Government auspices, trade unions and employers' representatives are being afforded an opportunity to discuss and appraise, at first hand, the policies and practices of labor and management in the United States, Great Britain, and other nations.

Leo R. Werts

LEO R. WERTS
Director
Manpower Division

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NOTES ON THE AUTHOR

D. F. MacDonald is a graduate of the University of Aberdeen (M. A. Hons.) and University of Oxford (D. Phil.). He was a university teacher until the war when he entered the service of the British Ministry of Labor and National Service. Subsequently he was appointed Secretary of the British National Association of Port Employers.

EMPLOYERS' ASSOCIATIONS IN WESTERN GERMANY

INTRODUCTION

I was invited by the Office of Military Government for Germany (U. S.), Manpower Division, to visit Germany in order to study and report upon the formation and activities of employer organizations in the industrial relations field. The scope of the project was as follows: to

- a. study the types of employer organizations that have been established since the end of the war.
- b. determine the extent to which they follow the pattern of or are different from German employer organizations before the end of the war.
- c. determine how the associations concerned primarily with industrial relations' matters fit into the over-all pattern of employer organizations.
- d. make an evaluation of the probable effectiveness of employer organizations in fostering collective bargaining in the industrial relations field, and discouraging arbitrary action on the part of either management or labor, with the resulting overemphasis on legislative action and the use of labor courts.
- e. determine whether the internal management of employer organizations follows democratic principles or is based on the autocratic rule of major employers or groups of employers.
- f. provide the opportunity to discuss with representatives of the organizations contacted the form and concept of employer organizations in other countries, especially Great Britain, with emphasis on the increasing consciousness of labor-management cooperation.

It was agreed that, for the purpose of the investigation, I should review conditions in both the U. S. and British Zones. The period of

NOTE: The views herein expressed are those of the author, and do not necessarily reflect the views of U. S. Military Government.

my research was necessarily limited, and accordingly my aim was to make as intensive an assessment as possible of the prevailing developments through the examination of a cross-section of the German economy. Accordingly I visited Hesse, Bavaria, Wuerttemberg-Baden, North Rhine-Westphalia, Lengo 1/, Hamburg, Bremen, and Berlin, and had meetings with officials of the U. S. and British Military Governments, representatives of employers' associations and of individual managements, trade union officers, and German government officials. There was also, of course, a considerable amount of documentary evidence to be examined.

1/ Zonal headquarters of the Manpower Adviser's Office of British Military Government.

PRELIMINARY OBSERVATIONS

In view of certain impressions that I received from my interviews, I believe, that at the risk of appearing pedantic or doctrinaire to those familiar with this department of social activities, it is essential at the start to state certain fundamental principles in regard to employer associations of this type - that is those dealing with labor questions and commonly described in Germany as "social-political" and to use them as a yard-stick at all times. It should be noted here that I have throughout the report used the adjective "social-political" in referring to such organizations. The report is almost wholly confined to them, as my terms of reference suggested, although "economic" organizations, that is, those concerned with economic issues of supply and demand of materials, taxation, etc. (Wirtschaftsverbaende) are necessarily touched upon from time to time.

It is certainly not my intention to be doctrinaire. I appreciate that Germany cannot be regarded as a "tabula rasa," on which the various parties concerned with present and future policies, can imprint the most up-to-date theories. They have to work against a background of present and pressing economic factors, and of prejudices and traditions deriving from the last regime or from its predecessor. Nevertheless, there is an opportunity here to preach new concepts or to refurbish and improve the better old ones, always with the basic aim of promoting democratic institutions.

For myself, I have always borne in mind, by way of contrast or comparison, the situation in the United Kingdom. The attitude of Allied administrators in Germany has similarly been to a degree influenced by the experience and policies of their own countries, which may be very different. It is unlikely, therefore, that my views on the fundamentals of employer organization will be fully accepted by all of them.

Employers' associations are trade unions of employers - bodies voluntarily emerging out of the need to present the collective views of their members. The employers' association in this sense is a democratic entity existing within and possibly only under a democratic state. It is sectional in the same way as, on a larger scale, is a trade union of workers, and is in itself no more objectionable. Its purpose is, not or should be, to thwart labor organization or to pit the forces of organized employers against it. It is, of course, true that there will be friction of greater or less severity between the two parties - neither has a monopoly of reasonableness - but the true aim is to avoid disruptive struggle so far as possible, and, in a disciplined manner, to negotiate to the fullest extent as partners in industry and with a due awareness of their responsibilities to the community as a whole. They should arrange that, if, as may well happen, their joint efforts cannot produce

a solution of any issue, a settlement will nevertheless be procured, not only in their own interest but in those of the community which they serve.

This is not just idealistic talk. It is true that, even in the most advanced democracies, employers' associations and trade unions may in some cases show themselves restrictive, heedless of the common weal, or inspired by political antagonisms. But experience has proved that employers' associations and trade unions, frequently as a result of much and often painful contact with each other, can and do come to regard each other as desirable and indeed necessary for the peaceful functioning of industry and the satisfaction of workers' legitimate aspirations, and that they can be accepted by democratic governments as a part of the natural order of things.

Incidentally, it is clearly impossible to deal with employers' associations without paying attention to what I regard as their natural counterpart - the trade unions, and to the machinery of collective bargaining in which they are - or should be - the vital elements.

Employers' associations, like trade unions, have, as already said, in general evolved in response to the needs of their members. In short, like Topsy they were "not born, they grew." They are essentially voluntary and the factor of compulsion should enter in only insofar as the views of a democratic majority (and the qualification is important) should normally prevail. (On this point I know that I am again on debatable ground; many experienced Americans hold that minorities should not necessarily be bound by majority decisions, and advance cogent reasons in support of their view.) Membership should also, of course, be voluntary.

This aspect requires particular emphasis in Germany. On more than one occasion, I heard the remark that the Military Administration and German government must, by exercising pressure through one means or another, directly invest the trade unions (or employers' associations) with more authority. This is a dangerous road. Such bodies should certainly be encouraged so long as their activities do not prejudice the welfare of the community and so long as (and I shall return to this point later) they do not try to arrogate to themselves functions or responsibilities of government.

But the danger of the state's creating or forcing growth is that the organization becomes associated with the state and, to the same extent, divorced from its constituents. Such a process may perhaps make the organizations more effective in some directions; but what is gained in one way is much more than offset in others. The strength of any such association must ultimately depend on the good will of its members. The process of growth will be slow and not easy, but the results will be more healthy and enduring.

It should be unnecessary in the light of recent experience to stress this point in Germany; but there is, as it seemed to me, an impatience to build up quickly, and an appetite for power, both in employers associations and unions.

Here I might refer to what appear at first to be contradictory tendencies in the German approach, but which in fact are not so. There is no doubt that the average German has an exaggerated liking for legal sanctions. Government has always, and not only under the Nazi regime, made elaborate regulations within which activities can be pursued; and there is an uneasiness if legal frameworks are lacking. This inclination has been reinforced by the circumstance that they are now subject to Allied control and their economic and social activities have been contained by edicts. They are, therefore, not unnaturally desirous of having firm official approval for any new departure. Further, there is an inclination to start, or at least to concentrate, at the top rather than at the bottom; to get impressive overall organizations and to get them quickly. This is no doubt partly an expression of nationalist tendencies; but it is also a form of authoritarianism.

At the same time, and not least among employers, there is a profound distrust of interference by officialdom in what are held to be industry's domestic affairs. The prevalent idea among employers and unions is for government to give powers to industry, and then leave it to discharge them. Where the employers deliberately seek partnership with the government, it is usually because they cannot without it get something that they want.

This is to some extent a reaction against an excess of official interference in the past, and especially in the Nazi period. Officialdom has too often in Germany been all-pervasive, and has also had a political face. It is difficult for the German to understand that a civil service need not be inherently political (in the party sense) or that a civil service should be no more than the channel of government. The dislike of the "Beamte" (civil servant) is given frequent expression. It reveals itself in the attitude not merely towards the German government but also towards the Allied Administration. Thus, in the early days of the occupation, many employers in the British Zone were prone to believe that with a Labor Government in power in the United Kingdom, the British officials must necessarily be anti-employer. In fact, I think it is true that there was rather more sympathy for employer organizations as an element in collective bargaining in the British than in the U. S. Zone.

It is, of course, easy to assume that in asking for freedom from government interference, the employers associations are seeking license to give full play to their most selfish instincts. This possibility in fact must not be ignored and it will be necessary to ensure that the authority allowed to employers' associations is neither abused nor allowed

to go beyond its natural province. At the same time, I consider that the desire to form associations, now very marked, is partly a genuine impulse towards collective bargaining. It does not follow that the objects of such collective bargaining are always necessarily admirable, as we shall see.

HISTORICAL BACKGROUND

Nowhere more than in Germany is it necessary to know something of the past in order to understand the present. Before the advent of Hitler in 1933, employer organizations had reached an advanced stage of development and in their different forms were very comprehensive. There was a concentration of economic power in large groups and though in general economic associations were separate from social-political organizations, there was naturally a fairly close relationship between them. Big business was and probably regarded itself as a powerful antagonist to the trade unions.

Organization in the social-political field was both vertical (i.e. each major industry having its own organization at local, Land and national level), and horizontal (i.e., federation on a geographical basis of the social-political organizations of different industries). Works Councils (Betriebsräte), with the backing of law, existed for dealing with labor questions at plant level, but it was normal for collective bargaining, in the sense of negotiation of wages, etc., to be on an industry-wide basis. Employers' associations were given the status of public corporations, (oeffentlich-rechtliche Koerperschaften). At national level, there was a social-political confederation of employers, the Union of Social-Political Central Organization (Vereinigung der Arbeitgeber).

Trade unions were also widely organized but in a less effective manner. There were three main groups, each covering a variety of trades, with a total of perhaps 8,000,000 members. The groups were split by political and religious differences which greatly weakened their influence both with their own members and with the employers.

During this period, there was in theory cooperation between employers' associations and trade unions in economic affairs as distinct from ordinary negotiations. The Constitution of the Weimar Republic provided for such liaison and there was a central joint committee (Zentralarbeitsgemeinschaft) where economic issues were to be discussed and advice tendered to the government. High hopes had been entertained on the labor side of this organization, but they were not fulfilled; and its influence seems to have progressively waned until it received its "quietus" from Hitler.

In 1933, employers' associations were dissolved, as were the unions. Economic associations (Wirtschaftsgruppen) were set up which covered the employers in much the same way as the German Labor Front (Deutsche Arbeitsfront) controlled the workers. Collective bargaining disappeared, and was replaced by tariff orders (Tarifordnungen) made pursuant to the Ordinance on Wages (Verordnung ueber die Lohngestaltung, 1938).

It must be remembered, however, that the new system was in this department more palatable to most employers than to the trade unions, since disputes were not permitted and wages were strictly controlled. This is one reason why the trade unions tend to identify employers with Nazism. They maintain that the large employers were the natural buttress of the system, and that the workers were its equally natural enemies. It is, of course, true that powerful employing groups did contribute vitally to the establishment and maintenance of the Nazi system.

On the other hand, to imply, as is sometimes done, that the employers were solely culpable and to absolve labor from any responsibility is simply to ignore historical fact. The results of the last free election and the strength of the Nazi Party showed that the Nazis had strong popular support. Many of the trade union leaders were undeniably hostile to the party and suffered for it. But to justify distrust of employers in social-political or other relations on the grounds of their complicity in the Nazi movement is only another illustration of the attitude that it was always the other man who was to blame.

It is important to make this point, because the trade union doctrine of putting the blame on the few is not merely historically unsound, but dangerous from the point of view of giving the mass of the people a realization of past mistakes and future needs. My main intent in referring to it, however, is merely to note the existence of this distrust of employers - and not only on the part of trade union officials but also of Military Government. It evidences itself, as we shall see, in the insistence by the unions that they should share in every employer activity, including management, and that they must have at least an equal voice in the formulation of all economic policies.

There was also the genuine fear of unions, at first shared by many Allied administrators, that the rise of employers' associations of any sort would foster a dangerous concentration of economic power. This outlook in the early days manifested itself in trade union opposition to the establishment even of employers social-political organizations, although this is steadily disappearing in the face of the unions' need for bargaining partners.

POST-WAR DEVELOPMENTS

Although Military Government early gave permission to establish trade unions, it was not unjustifiably chary of giving the same latitude to employer organizations, on political grounds. The distrust of employer organizations was particularly marked in the U.S. Zone where the apprehension of any recrudescence of economic groupings was not assuaged, as in the British Zone, by an easy acceptance on the part of Military Government of employer organizations as such. In any case, in the early period, there was comparatively little demand for employers' associations. Leading employers knew that in many cases they were politically suspect, and they preferred to remain if possible in obscurity. Many of them believed that a social revolution was under way which would leave no place for employers.

As time passed it was increasingly realized by the Administrations of the three Western Powers, that if employers were to be consulted on economic matters, as was inevitable, especially while the German economy was so rigidly controlled in regard to prices, wages, etc., it was necessary to relax the prohibition of employer organizations to allow them to voice collective opinions. It is significant that the first associations to be permitted were regarded as essentially economic organizations, designed to give advice to the Administration and to pass on instructions to their members. This development began in the British Zone as early as October 1945. In less than a year such bodies were permitted to participate in collective bargaining "as soon as the principles of collective bargaining has been established", a qualification of much importance in view of the hostility of the unions to any form of collaboration with employers.

The first stage, therefore, was the creation of trade or economic associations (Wirtschaftsverbände) restricted to one industry, and able also to deal in a fairly general way with social-political matters. From an early period, however, separate employer social-political organizations were in fact developing in a more or less clandestine manner in preparation for the time when official approval would be forthcoming.

An impetus was given to the return of collective bargaining by the gradual relaxation of the "wage stop", a process begun in 1946 and completed some two years later. The "wage stop", by and large, had frozen wages as at the date of the occupation; it continued to give effect to the tariff orders of the Nazi time. While the "stop" continued, there was comparatively little on which employers and unions could negotiate. But now the unions recognized the need for collective bargaining and of employers' associations as a part of it.

Employers' associations appear to have developed more quickly in the British Zone. This was natural since the industrial concentration is much heavier there, and the need for corporate expression of industry's views more imperative. The British Military Government was less concerned than U.S. Military Government with the danger of employers' associations in the social-political field leading to concentration of economic power; it had not done so in the United Kingdom and, properly controlled, there seemed to them no reason why it should do so in Germany. In the U.S. Zone too, however, business and professional associations gradually appeared. They were limited to one large industry or trade, were not to extend beyond the Land, and there was to be no horizontal federation across industry lines. Collective bargaining was openly encouraged and "employer representations" (sozialrechtliche Arbeitsgemeinschaften) could be formed for the purpose.

There is no need to try to recount the processes by which employer associations reached their present fairly advanced state. It is easier for employers than for trade unions to organize and, as already said, there had been evolving embryo social-political organizations, frequently as by-products of trade associations. Once the official deterrents to associations as such were removed, growth was rapid. In some cases the economic and social-political functions continued to be exercised by the same body, with a department for the latter (Sozialpolitische Ausschüsse). In others social-political associations became self-sufficient (Arbeitgeberverbände), though preserving a liaison with the corresponding economic organization.

In general, the tendency is for social-political and economic organizations to be separate, but apparently not to the same extent as before 1933. The form depends partly on the nature of the industry. If it is fairly homogeneous, the two functions can be combined, but in the more complex industries it is accepted that the economic association cannot adequately cover social-political matters. In any case, the distinction is not so clear cut, as it sounds, as the economic association may have a social-political department.

There is thus no rule, although at top level there is an insistence by employers that social-political and economic organizations should be separate. The unions also are interested in this question. They have criticized the tendency to form separate organizations on the grounds that this can be a device on the part of employers to evade the making of final bargains; that is, they complain that a social-political organization may refuse to conclude a wage agreement without the authority of the corresponding economic association. I have found no evidence to support this allegation. If evidence does exist, it merely proves that the employers' organization concerned is not discharging its proper responsibilities. There should be no question of its having to secure the agreement of another body, although there may well have to be domestic consultation on the economic aspects of the negotiations.

The most important reason for the trade unions' preference for composite employers' organizations lies in their own wish to have more say in purely economic matters. It would simplify matters in this direction if the trade union dealt with the one body both as regards wages, etc., and economic issues. This may also influence the employers in some industries in having only the one organization for dealing with both functions; but it is more likely to influence them towards separate organizations, with a view to accentuating the division between the two departments.

Very shortly after employer organizations had started to develop, there was a tendency to affiliate across industry lines, a movement also first apparent in the British Zone, where it was not actively opposed. In this movement, the metal industry, as being by far the strongest, took the lead. In January 1947 there was set up in North-Rhine-Westphalia the "Employers Association of the Iron and Metal Industry for the Rheinisch/Westfalen Industrial Area". Associations for other industries affiliated to it, to form the Employers' Committee in North Rhine-Westphalia. Similar cross-industry organizations were developing in other Laender of the British Zone, namely, the Central Office of Economic Union in Niedersachsen and the Social-Political Committee of the Employers of Greater Hamburg; and the three joined to become the Arbeitsgemeinschaft of the employers in the Zone with their headquarters at Duesseldorf. It became the counterpart at zonal level of the British Zone Trade Union Federation DGB (Deutscher Gewerkschaftsbund, or DGB).

The same process was to be observed in the U.S. Zone, though the movement met here with more opposition from the Administration. Social-political organizations were by regulation confined in their scope to collective bargaining and were not supposed to cross industry lines, even within the same Land; but the regulations were quietly by-passed. There was in fact a re-birth of the old Arbeitgeberverbände of the pre-1933 era. In Hesse in 1947 there emerged a federation covering the ten principal industries. It did not take on any collective bargaining functions, which remained the prerogative of the individual "employer representations". Its professed task was to act as the counterpart of the Hesse Trade Union Federation, in representing its members' views in matters of broad policy, especially through the selection of employer representatives for Labor Courts and other tribunals and public bodies; and (a recurrent theme) to discuss with the trade unions aspects of co-determination, already a very live issue.

The last stage was the extension of organization beyond Land and Zone level to the Bizonal (and thence no doubt in due course to the Trizonal).

After much discussion with the Military Government, there was created a Working Committee of the Combined Economic Areas (Sozialpolitische

Arbeitsgemeinschaft der Arbeitgeber des Vereinigten Wirtschaftsgebietes). It is very comprehensive in its scope, designed to cover industry, crafts, agriculture, wholesale and export trade, retail trade, banks and insurance, and other trades including transport. Membership is voluntary and restricted to social-political organizations. Its purpose is stated in very general terms as "to safeguard their joint social-political interests".

It recognizes the importance of free expression of views in its draft statutes by an article to the effect that "Should a resolution be passed at a membership assembly or meeting of the executive despite unanimous protest of the delegates of one economic branch, this economic branch may demand that its opinion and reasons be announced simultaneously with the resolution. It has also the right to defend its own point of view".

It is significant that similar discussion with Military Government are now under way for a bizonal organization on the economic side. Again the main argument advanced by the employers in support of such a body is the necessity for an organization to meet the trade unions' demand for joint consultation on economic questions. They argue that it would be impossible for the one body to cover both social-political and economic matters; and indeed it is almost certainly true that, even if there were such a body, there would need to be two departments.

Summing up this sketch of the social-political structure of employers, one finds that at local, Land and Bizonal level, the type of organization existing prior to 1933 has been re-created, with the union of social-political central organizations (Vereinigung der Arbeitgeber) under another name and with a much wider basis than the old (since the latter was confined to "industry") at the top.

To sum up also one's impressions of this development, there would appear to be nothing inherently objectionable in the set-up and much to commend it. The bizonal organization roughly approximates, in its conception, the British Employers Confederation. In the United Kingdom, too, the need for a joint advisory committee of employers with the Trades Union Congress has been accepted as a natural part of the peacetime economy. 1/

1/ A bizonal trade union federation has not been created, but a trizonal union federation for Western Germany will be founded in October 1949. At present, there are three Land trade union federations in the U.S. Zone, and a zonal federation in the British Zone.

One may have some misgivings about possible future trends. The emphasis at this time is entirely on the consultative and advisory functions of the Working Committee. How far it will remain so will depend largely on the attitude of the German government. I have met suggestions that the Working Committee acting through group or local organizations, should in cooperation with the trade unions be able to exert such influence on government as to make fairly sure that their views would prevail. It was a practice before 1933 in Germany that draft social or economic legislation - which covers a wide province - should be submitted to employers and unions, acting together, for their opinions. There is nothing necessarily harmful in this, and indeed it should ease the task of legislature in the preparation of laws on the principle of which parliament has decided. The suggestions, however, have at times gone further and indicated that the legislature must be bound by the views of such joint bodies.

At high level, any such intentions have been disclaimed both by unions and employers, although in conversation with representatives of the former, the wish was evident that the unions, along with representatives of employers in both the social-political and economic fields should have delegated to them by parliament certain executive duties, without any infringement of the right of parliament to make the laws. The central joint body would then decentralize its work to the extent of giving authority of regional groups for carrying out social and economic policy - e.g., the rationalization of an industry.

This indicates the need to ensure that the duties and the power of employer organizations (as of trade unions) must be closely watched by government in order that they should not at any time trespass in the sphere of democratically-elected legislatures. Once again the inclination on the part of employers' associations and unions towards assuming more power than are contained in their normal functions seems to be inspired partly by a belief that governments cannot be trusted to do the right thing. The reasoning here is unsound and is obviously influenced by experience of the Nazi totalitarian system. It is true that governments will at times err, but the answer is not for them to delegate their functions to other bodies, but for them to be subject to the will of the people as a whole by free and regular election.

The assumption that because employers and unions agree on a policy it is therefore sacrosanct is also unsound. Each, as said at the beginning, represents sectional and perhaps selfish interests, and it does not by any means follow that their common policy would always be to the benefit of the community.

I have used the word "suggestions", but in fact there is concrete evidence that employers and unions aspire to a dangerous measure of control over the economy of the country. There has, for example, been a proposal to set up Land economic councils, composed equally of employers and workers

among whose many tasks would be:

1. to vet economic and social-political bills of the Land government;
2. to propose such bills themselves, the Land government being obliged to submit them to the Land parliament even if not in favor of them;
3. to be authorized to make objections to a law passed by the Land parliament which would ensure that it would be re-submitted to the parliament, which could pass it only with a two-thirds majority.

It has been asked how it is that the employers and unions, if they so much dislike government interference, are prepared to be partners with it in this kind of administration. The answer is that in return they would be given a dominant influence in the legislative itself on economic and social-political affairs.

PORT ASSOCIATIONS

These require special consideration, partly because they are peculiar in their nature and partly because certain projected policies in connection with them are now causing some concern to the U. S. and British Military Governments.

Taking Greater Hamburg, one finds the usual over-all employer association, composed of separate social-political bodies, including economic associations with social-political departments. One of its members is the Port Association, comprising all port employers, with a total force of about 11,000 dock workers. (The pre-war figure was in the neighborhood of 20,000.) It covers shipowners, stevedoring employers, crane companies (who hire out cranes) and a variety of others, including the state-owned Hamburg Port Storage and Quay Company which owns the port installations. Within this association there are separate organizations for the different groups of employers, altogether 15 in number, but these deal mainly with economic questions. The port association itself is about 70 percent social-political in its work.

There is also a loose Working Committee of all seaport employers in the Bizonal area - there is no desire on their part to associate with the employers of inland ports. This is a revival of a similar federation existing before 1933, and re-created in response to the trade union demand for standard minimum wages for all dock workers; a matter on which it recently negotiated an agreement.

The most difficult problem of the port association, as in other German ports, is the decasualization of dock workers, of whom there are about 3,500 in Hamburg the remainder being in the permanent employment of individual undertakings. The association was indeed formed under the Nazi regime in order to act as the "legal employer" of casual dock workers, to be responsible for the allocation of labor, holiday arrangements, the payment of social insurance contributions, etc. Two years ago it introduced a scheme of guaranteed weekly payments to dock workers; four days guaranteed work or wages a week (at DM 9.80 per day), the cost being met by a 2% charge on employers' bills.

The administration of the scheme is nominally vested in the Association but there is a joint working committee with an independent chairman for the settlement of such disputes as do not go to the labor court.

All employers are in the association and participate in the decasualization scheme. There is, however, a strong feeling among leading employers that the lack of legal sanctions (which existed under the Nazi

system but were discontinued in 1945) is a source of weakness. It is argued that there is no compulsion on the employers to participate in the scheme, and that there is no effective means of disciplining employers who break the rules. For instance, there is an understanding that an employer shall not keep labor allocated to him for more than a week at a time; but this is said to be frequently flouted. It is also alleged that when attempts to discipline employers have been made, the employers concerned have challenged the right of the association to do so.

In Duisburg, an inland port, the position is somewhat similar. There is the Rhine-Ruhr Port Employers Association, which is an economic body with a social-political branch and is, in respect of this branch, in membership of the North Rhine-Westphalia social-political organization. Under the Nazi regime, the port employers' association was to create a "legal employer" for casual workers and this device has been continued. The guaranteed wage is on the same basis as in Hamburg (the rate of pay being slightly lower), and the expenses are met out of a levy of 20 percent on wages. The scheme is administered by a joint body. Here also there is a desire on the part of the association and of the union for a legal basis for their decasualization scheme.

Bremen differs in that there is a local law, passed in March 1947, which gives the administrators of the scheme all the legal backing they require for its purpose.

A draft ordinance to establish Associations of Port Enterprises is now under consideration by the Military Government. It provides that employers and union jointly by written agreement may establish an association to create standard working conditions, and that even where an undertaking is not a member of the employer association, it shall be bound by the agreement so long as the employers making the agreement represent not less than 50 percent of the employment of casual workers. The enterprise is to make by-laws which must be approved by the Land Ministry of Labor, and it is to have the power to levy charges.

The ordinance is extremely vague and would certainly require to be much more specific before it could secure official approval. It does not even state its primary purpose, which is understood to be decasualization of dock labor. It is objected to on the grounds that by agreement between the union and a proportion of the employers all employers, whether members or not, would be committed legally to make certain payments and obey certain rules.

As I have indicated before, this last does not seem to me to be particularly evil, except that the figure of 50 percent is too low a

standard of representativeness. A higher figure could be substituted, since employers are said to be more or less unanimous in supporting the objects of the plan.

INTERNAL MANAGEMENT

It would, in my view, be much preferable to have such schemes based wholly on collective agreements between the parties, and I should advocate that the employers' associations in consultation with the union should give further consideration to the practicability of making the schemes fully effective without legal sanctions other than those already existing. It should be possible for employers and unions collectively to impose their own discipline of offenders against the scheme, whether employers or workers. On the other hand, it may be argued that if Bremen can get a law, so should the other port areas; and, of course, there is the demand for uniformity of practice, which, however, seems to me to be exaggerated.

The question has been asked whether employer organizations are democratic or whether large interests have a dominating influence.

The two questions have no connection. So far as I could find, the procedure of the associations is reasonably democratic. But the answer to the second seems to me to depend on the organization of industry itself. If there are powerful industrial groupings, then inevitably they must exert a greater influence in any assembly of which they are part, and no equalization of voting rights will prevent it. The German employers in North Rhine-Westphalia frankly admitted that the metal industry has the predominant influence, and justified this on the simple and good grounds that, in the combined zones, 35 percent of the workers in industry are employed in iron and metal. The same argument would be used of individual undertakings combining in the same industry. If it is desired to prevent industrial interests having varying degrees of influence in social-political or other employers organizations, then the remedy, if one is necessary, must be found in the basic organization of industry itself.

CO-DETERMINATION

In the answer to a questionnaire circulated to employers by Military Government in the British Zone, one pregnant comment received was that "objective deliberation on questions are being hampered by individual trade unionists who insist upon fundamental claims instead of restricting themselves to the settlement of practical issues." This is a reference to claims in regard to co-determination (Mitbestimmungsrecht).

There is no authoritative definition of co-determination. Control Council Law No. 22 (1946) permitting the re-establishment of Works Councils, recognizes that works councils shall have certain rights vis-a-vis the managements but leaves it to each plant agreement (Betriebsvereinbarung) to determine their extent. The rights of works councils in this respect may also be the subject of an industrial agreement, as in the Bavarian metal industry, where an agreement, concluded by the trade union and employers in July 1948, laid down the principles to be followed. Works councils, by that agreement, were allowed to participate fully only in the treatment of labor questions. On economic matters the employers undertook to inform employees so far as possible of the plans of the management; and every three months the management was to submit a report to the works council covering:

1. projected plant changes;
2. new production and its purposes;
3. the production program as a whole;
4. price decisions;
5. raw material situation;
6. the marketing positions;
7. manpower requirements.

As regards this last, the works council has a voice in the recruitment and dismissal of individuals, but not in determining the size of the total labor force.

The trade unions themselves, as far as I could ascertain, have not finally made up their minds as to what economic co-determination is to mean; but from recommendations which were issued by the British Zone Trade Union Federation (DGB), it is clear that it is little, if at all, short of joint management, and would entail, for example, access on the part of the works council to all information on the undertakings' activities including balance sheets, and equal representation on the Boards of Directors.

A works council law passed by the Hesse Landtag in May 1948 also throws some light on the meaning of co-determination. It affirms that

"the right of co-determination of the works council in economic questions does not extend to the business of current administration"; but the works council is to be entitled to have the commercial and tax balance sheets submitted to it, to inspect business documents, in particular the ledgers and written contracts, and to be entitled to consult experts in checking the business transactions if it thinks fit. Two members of the works council are to be appointed to the Board of Directors (incidentally not a new departure in Germany; this was known before 1933).

The economic sections of the law were suspended by U. S. Military Government pending determination in the Basic Law (provisional constitution) of the division of powers between the federal government and the Land governments.

There are various reasons for the anxiety of the unions for co-determination, which, it should be noted, is to start at plant level, but, as seen elsewhere, is to be continued to the top. There is first the genuine concern over the relationship between prices and wages. Again, the trade unions are more political than in the United Kingdom or the United States for changes in the economy. This policy is partly a product of the bitterness felt about the part played by "big business" in the introduction and maintenance of the Nazi system and the desire to prevent its repetition. No doubt it has been strengthened by the need either to borrow the Russian slogans resounding next-door, or to find others equally attractive to the "proletariat"; and it cannot be denied that what is regarded as a new conception of socialism is very plausibly presented. Incidentally, in Germany, socialism as advocated by the unions apparently does not mean state control, but management by public bodies on which the workers would have their due share and to the attainment of which co-determination is a natural step.

Another reason for the policy is the desire for power for its own sake. The employers are as a whole resolutely opposed to co-determination in the sense of joint management; but they are prepared to go back to the position under the Weimar Republic, and to have at least a central joint committee, perhaps with regional groups where broad economic issues could be examined and policies, if possible, agreed. In taking this attitude, they may feel that the best way to avoid joint management is to divert it, so far as possible, to generalizations on policy.

It appears to me that their attitude is reasonable and that the more progressive managements have gone far to meet the workers in granting the fullest measure of joint consultation on labor matters.

While I think that Military Government could have taken no other line than it did, I doubt if the answer on co-determination should be a political one. I know that my doubt is shared by some leading Germans

sympathetic to the union demand. They consider that co-determination, to be effective or have any permanence, must start in the plant, by agreement, and develop from there.

There is little doubt that the slogan of co-determination has made employers suspicious of the motives of works councils and trade unions, and that the suspicion must inevitably continue while a doctrine which the employers hold to be impracticable and whose ultimate aim is their elimination, is introduced into the joint discussions.

COLLECTIVE BARGAINING

Employers' associations, like trade unions, have other functions besides the negotiation of agreements on wages and working conditions. It has been the practice for Land governments to consult them on most projected social measures; and, incidentally, governments in Germany, as in the past, have a wider jurisdiction than that of the United Kingdom in those matters, for example, with regard to holiday legislation, which is detailed and differs from Land to Land. The associations also advise their members, represent them in labor courts, nominate representatives to labor courts (as assessors) and to consultative committees, etc.

On the other hand, their interpretation of their industrial relations functions appears somewhat restricted. The emphasis lies very largely on the making of wage agreements with the unions. Starting with the plant, one finds the management dealing with works councils. The works councils, however, are not offshoots of the unions; they exist independently and are governed by law. They approximate the shop stewards type of organization. Their members need not necessarily be members of the union, although the works council is required by law to work in cooperation with the union. The unions are trying to extend their control over works councils and, in many cases, when it comes to actual negotiations the union official plays the leading part. The unions also issue general guidance to works councils.

On the whole the relations of management with works councils seem to be reasonably good, and would probably be better if it were not that the works councils, with the support of the unions, is seeking the right to interfere in management proper.

By Military Government regulations, associations were permitted to make agreements only in respect of their own consenting members. There is also no trade union "closed shop", nor do the unions desire it. An "Ordinance Concerning Collective Agreements" (Tarifvertragsgesetz) has this year been promulgated, which will somewhat change the position. It provides, first, that the "principles" of an agreement will continue in force until a substitute agreement is made. Secondly, if the parties to the agreement wish it, the Director of the German Bizonal Department for Manpower, in consultation with a committee representative of the head organizations of employers and workers, may declare it to be binding on the industry or trade as a whole, always provided that the employers party to the agreement employ not less than 50 percent of the workers. The parties affected by the extension of agreement will be free to present objections to this course. 1/

1/ The law also provides that all interested groups which may be affected by the extension of applicability, including Land governments, should be consulted and if a Land government protests the extension of applicability, the Bizonal Executive Committee would decide instead of the Director of the Bizonal Department for Manpower.

CONCILIATION AND ARBITRATION

A dispute in the plan between management and labor on an internal question is considered by the management and the representatives of the works council. The law which governs works councils does not say what is to happen when the parties fail to agree, and there seems to be considerable variety of practice. There can, however, always be reference to the labor court (Arbeitsgericht). Labor courts are permitted by Control Council Law No. 21; like works councils, they were well established before 1933 under the German Labor Courts Law of 1926. The labor court consists of a judge with employer and worker assessors. It is a court of first instance and either party to the dispute may appeal from its decision to the Appellate Labor Court as the court of second instance. There is no supreme labor court at present.

The use of a labor court illustrates very clearly the approach of German industrialists and unions to conciliation. The courts are essentially legal bodies, but so far as there is a connection with a government department, it is with the Labor Ministry and not the Ministry of Justice. It is held among some employers that there should be no connection with the Labor Ministry, but this view seems to stem mainly from the suspicion that the labor court judges are frequently ex-trade union officials, that they are not always as impartial as they might be, and that this partiality originates in the Labor Ministry which appoints them.

Although the labor courts are legal bodies giving legal judgments, they should, I suggest, not be an integral department of the judiciary. It is essential that the judges should be impartial and, since they are quasi-legal, qualified in the law which they administer. It is not always easy, however, to find both legal qualifications and knowledge of conciliation (as distinct from conciliation procedure), and the judges in the labor courts are more and more regarding themselves as, in the first instance, conciliators. The judge meets the parties and tries to find a formula of settlement of the dispute; and only in the event of failure to find such a formula would a formal judgment be given by the court.

Apart from this legalistic expedient, there is no universal rule for settling local disputes and it can be said that reference of a dispute to higher level is not accepted as a cardinal principle in the same way as it is in the United Kingdom. There are instances - and their frequency is, in my opinion, largely a question of how close the relationship is between the employers' association and the trade union concerned - where the parties may agree to refer it to an arbitration board equally representative of employers and workers with, it may be, an independent chairman.

If the dispute raises issues of wider interests than those of the plant ^{1/}, there may be consultation at higher level between the employers association and the trade union. Here it should be noted that a local dispute may be a symptom of a more widespread "malaise." If, for instance, there is a breakdown in high level negotiations between unions and employers, a strike may be declared. The strike, however, may (it is said) be deliberately restricted to selected plants, usually the busiest. The workers at other plants concerned but not directly involved will then be asked to subscribe to a fund to help their striking comrades. This method is the result of a lack of funds on the part of the unions.

My impression was that if a labor dispute (other than those capable of being dealt with by the labor courts) proved intractable, there was too much readiness on the part of both sides to accept the impasse as one to be resolved only by strike or lockout action. That is not to say other courses are not recognized, and sometimes followed.

Control Council Law No. 35, enacted in August 1946, while permissive in character, laid down certain basic principles which, it was hoped, would guide the parties in the settlement of disputes. If the parties agreed, a dispute not within the jurisdiction of the labor court could be referred to the Labor Administration of the Land, for submission to an Arbitration Commission ^{2/}. The Commission would be equally representative of employers and workers, its members being selected from panels of persons nominated by employers associations and trade unions, with an independent chairman appointed by the Administration. Awards were not to be binding except by mutual consent of the parties, unless the interests of the Allied Occupation were directly affected.

Although the procedure suggested is occasionally utilized, the view persists in many quarters that the primary purpose of employers associations, in relation to trade unions, is simply to negotiate wage agreements. German legislation is now in course of preparation, and I understand that a final draft of the proposed law has been unanimously endorsed by employers and unions at bizonal level.

This law also will strongly reflect the aversion of both parties from the element of compulsion in almost any circumstances. It also vividly illustrates the avowed dislike of both parties for any interference by the

- ^{1/} Editorial Note: The trade unions may and do negotiate at the plant level as well as on a wider basis.
- ^{2/} The law provides, among other points, for the establishment of government conciliation as well as arbitration machinery.

State. The "Supreme Labor Authority" (or Ministry of Labor) in each Land would have general supervision of conciliation "agencies" and bear the cost; otherwise its part would be negligible. Even this degree of interference it is intended to avoid, if possible, since the official machinery would not operate where the industry has been able to produce its own conciliation procedure. Each Supreme Labor Authority would be under obligation to set up an arbitration "agency" for settling disputes within the Land. There would be an "agency" established by the Director of the Manpower Department for disputes extending beyond the Land. Conciliation officers would also be appointed by him, to observe and advise on conciliation procedure.

The "agency" would consist of arbitration chambers, each composed of two "councillors" from employers and two from employees, with an independent chairman who could be appointed by the Supreme Labor Authority, or, in the case of the higher court, by the Director of the Manpower Department, after consultation with the top organizations of employers and unions, who must approve the official lists of chairmen.

The "agency" would operate at the request of either disputant. The chairman is first to try to reach a friendly settlement preferably through the parties' own "private" arbitration machinery. If he fails, the case goes to the Chamber, which also is to try first to reach a friendly settlement. As a last resort, the Chamber would make a proposal for a solution; but the "award" would not be binding on the parties unless they had both agreed to this; and indeed the draft specifically envisages rejections of awards.

Where a dispute appears to threaten widespread interests, and arbitration either has not been used or has failed, the Director of Manpower could set up a court of enquiry consisting of independent persons appointed in agreement with the top organizations of employers and unions.

I have every sympathy with the desire of both employers and unions to reduce to a minimum State interference in their domestic differences, and agree that the emphasis should at all times be placed on internal negotiations. On the other hand, it seems to me that there must be a clear choice; either employers and unions must settle their disputes or devolve on others the task of doing so.

If so, then the proposals of this draft law are not sufficiently definite, since the parties need neither establish their own machinery nor accept the decisions of outside courts. It is somewhat remarkable that the flair for organization, which German industry has shown in the other fields of activity already referred to, should have been given so little scope in this department of conciliation.

In fairness I should mention that an employer who is acknowledged by the trade union leaders and other to be most progressive in his outlook, admitted to me that the machinery of conciliation was not elaborate, at the same time referring somewhat caustically to the present experience in the United Kingdom, where, despite the existence of what must be the finest conciliation machinery in the world, the incidence of strikes, many of them very serious, is high.

This is fair comment. I cannot, for a moment, accept the possible innuendo that the industrial quiet in Germany is in any way connected with the comparative lack of conciliation machinery; it is due mainly to economic and political factors. It can be admitted, however, that too elaborate a procedure for referring disputes to higher bodies can, if misused, defeat its own object. The parties - or either of them - to a dispute may, either from weakness or lack of a sense of responsibility, tend to pass on too easily their troubles to others, to make the decisions. This was, in fact, what happened in Germany before the advent of Hitler, and especially in the early thirties when, I was told, 80 percent of wage settlements of that period were made by State arbitration. This is, however, not to condemn machinery, but to admit the possibility of its abuse.

It may be that the most promising part of the law will prove to be that for the appointment of conciliation officers; but their success in bringing voluntary arbitration methods into being will depend, firstly, on their own ability, and even more on the cooperation of employers' associations and trade unions.

CONCLUSIONS

It would be wrong for me, after so brief and cursory a survey, to attempt to pass judgment on the policy of the Allied Administration towards employers organizations; but I may be permitted to express the opinion that that policy has on the whole been very statesmanlike. If the premises I stated at the beginning are correct, then it is better for such organizations to develop fairly slowly in response to the pressure of events and needs; and the Administration has not seriously impeded this kind of growth. It was fully justified in making critical scrutiny of the various proposals and movements with due regard to the record of the Nazi system and the aims for the future of the Occupying Powers. The regulations issued by the Administration were strict but the policy in fact was not rigidly bound by the letter of the regulations, as my sketch shows. My impression has been that at all times there was a readiness on the part of those responsible, in both the U.S. and British Zones, to entertain proposal from employers (as from unions) on their organization, with tolerance and understanding, if not necessarily with sympathy.

I consider that the need to maintain a close review of employers' organizations will be even more essential in the near future than it was in the recent past; and this applies both to social-political associations and to economic associations, especially where they tend to merge in their functions. It is above all imperative that, if democratic systems are to evolve, such organizations should not be allowed to go beyond their proper province, which is to advise and deal with their own members, to advise but not to control government, and to negotiate on matters within their province with trade unions.

The Military Government regulations have in various directions been outstripped by events, and it is desirable that some broad code to take their place should now be devised, within which employers' associations should grow and function. It is understood that the Economic Council has already been invited to frame such a code, and pressure, if necessary, should be exerted on it to expedite the work.

As regards the power of associations to negotiate wage agreements. I am of the view that agreements freely negotiated by bodies representative of a major part of the industry should be binding on the industry as a whole; but the majority should be decisive and certainly more than the 50 percent figure which is the standard in the Ordinance on Collective Agreements.

The machinery of conciliation is capable of improvement and there should be quite positive means of settling all disputes. The conciliation procedure, however, is comparatively new and experience will no doubt

compel such improvement, especially if the conciliation officers are given the confidence of employers and trade unions alike. There is no reason why the methods of either the United Kingdom or the United States should be imposed. The problems may be roughly the same in all countries but the approach to them must vary, according to the character and outlook of the parties concerned. There must be certain principles recognized, however, and in particular, the need for a procedure within the industry which should normally settle all disputes, with the proviso that there must be a final court of settlement.

On co-determination it may be unwise to comment, since this question may be dealt with in due course by the Federal Parliament. My personal opinion is that, to say the least, the trade unions, by insisting on co-determination, are performing a disservice to their primary task of conciliation. It would be better, I suggest, for them to concentrate at this time on building up their own strength, not on the basis of political or politico-economic theories but on their practical services to workers in industrial relations. Certainly questions of economic control cannot be ignored; but, to judge by the experience of the Western democracies, the greater part must be the ultimate responsibility not of employers and unions as such, but of government, assuming, of course, that overall control is required.

The situation as a whole is not easy to describe within the compass of a short report. Developments have taken somewhat different forms and have not been synchronized, especially between the different zones of occupation. A uniform pattern will no doubt emerge if the German proclivity for organization is given full rein. The German economy is obviously passing through a transitional stage where policies are tentative and, in some cases, experimental. But the policies are there and the experiments are being made, and a clearer picture will no doubt be apparent in, say, another year's time.

ACKNOWLEDGMENTS

The report has undoubted omissions and probably mistakes, but I hope they are not of so grave a kind as in any way to invalidate the general observations. Whatever shortcomings there may be are in no way due to a lack of facilities for my research. The Military Governments in both the U.S. and British Zones were most cooperative and freely put at my disposal, not merely the means of pursuing my investigations as I wished, but also the knowledge of their experts in this field. I owe thanks to many individuals for the generosity and courtesy with which they imparted information and advice.

I also wish to record my appreciation of the consideration shown by the National Association of Port Employers in allowing me to undertake this work at a time of considerable industrial stress at home.

/s/ D. F. MacDONALD

25 July 1949

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OCCUPIED AREAS OF GERMANY

